

Key points:

- **Recognize eligibility even when student does well academically**
- **Approach need for medical diagnosis cautiously**
- **Conduct evaluation parallel with RTI interventions**

4 take-aways from OCR's guidance on students with ADHD

A teacher tells a parent that she needs to have her son diagnosed with ADHD before the school can conduct an [evaluation](#). A principal says a student isn't eligible for Section 504 because he's passing his classes.

"I don't doubt that there are some districts that have these opinions. And they're wrong," said Tara Moffett, school attorney with [Girvin & Ferlazzo PC](#) in New York.

In reviewing about 2,000 complaints involving students with ADHD over the last five years, OCR hits on these and other concerns in a comprehensive guide on students with ADHD and Section 504, reported in a *Dear Colleague* letter at [68 IDELR 52](#).

Many teachers and administrators take appropriate action to ensure students with ADHD receive the protections they're entitled to, the agency wrote in the July 26 DCL. However, "many others are not familiar with this disorder, or how it could impact a student's equal access to a school district's program."

On the issue of lack of awareness about ADHD among school staff, school attorney [Jose Martín](#) said he disagrees.

"Of the conditions out there, it's prevalent enough and has enough awareness that I think teachers are pretty attuned to what's a typical level of hyperactivity or impulsivity or attentiveness and when students are atypical with respect to that," said Martín, a partner with Richards, Lindsay, & Martín in Texas.

Still, OCR's guidance includes a comprehensive overview of issues raised in recent complaints and investigations, Martín said. As such, use it to review these issues with your staffers as you gear up for the new school year:

1. Students who perform well academically can still be eligible. In this guidance, OCR reiterates that having good grades does not preclude a student from having a disability under Section 504, Moffett said. Some students may have behavioral challenges or require additional time or energy to complete tasks, she said.

"There are some kids who have ADHD who are hyper-performing. They have a hyper-focus and rush through all their classwork. But they can't sit still and they start interrupting others when they're done," she said.

A student with inattentive-type ADHD might gaze out the window until a teacher redirects him. Both students may perform well academically and still be eligible for Section 504's protections against disability discrimination, Moffett said. In addition, they may need accommodations or services to meet their needs.

2. OCR presumes eligibility with ADHD diagnosis. In its guidance, OCR wrote that it will "presume, unless there is evidence to the contrary, that a student with a diagnosis of ADHD is substantially limited in one or more major life activities." This is a little bit surprising in that it seems to "unduly elevate" a medical diagnosis in the 504 evaluation process, Martín said.

"An evaluation requires multiple sources of information," he said. "At times, a diagnosis isn't very well framed."

If a parent offers a private diagnosis, offer to do an evaluation, Martín said. Then, during the evaluation, teams can consider whether the medical assessment was comprehensive and evaluate other sources of data in determining eligibility, he added.

This guidance is also a reminder that schools shouldn't be spending too much time analyzing whether a student qualifies for the nondiscrimination protections under Section 504, said Jessika Kleen, with [Machado Law Group LLC](#) in New Jersey.

"Remember, this is an antidiscrimination law, not an education law. So you're identifying that this person has a disability and you can't discriminate against them," Kleen said. "After that, the focus needs to be on whether that student actually needs an accommodation plan. That's where the stronger level of analysis needs to be."

It's possible the team will determine that the student has a disability and is protected from discrimination but that there's no need for services or accommodations.

3. Medical assessments not required, but if necessary, parent can't be charged. Tread cautiously around the issue of medical assessments, Moffett said. Nothing in Section 504 requires a medical assessment as a precondition to eligibility. However, "if the district believes a medical assessment is necessary and the parent volunteers to pay for a private assessment, the district must make it clear that the parent has a choice and can choose to accept a school-furnished assessment," OCR stated in its guidance. Kleen said she worries that this affirmative duty to inform parents that the district will pay for a medical assessment will lead to unnecessary assessments and an additional burden for schools.

"I'm afraid the biggest [impact] will be an influx in requests for evaluations to be paid by districts when the child doesn't need it, or the parent would have used their insurance to cover it before," Kleen said.

4. RTI can't delay evaluation. OCR reiterates in its letter that interventions such as RTI, MTSS, or PBIS cannot be used as a prerequisite to a 504 evaluation, Martín said.

"Districts love procedures that are sequential, but not everything is sequential," he said.

If a parent requests an evaluation or there's suspicion that the student has a disability, conduct an evaluation, Martín said. Provide interventions during the evaluation, Kleen said.

"That serves many purposes. It allows the child to receive some type of assistance while the evaluation is going on," she said. "And it helps the team look back and determine what worked and what didn't."

See also:

- [ADHD guidance emphasizes distinction between disability, performance](#) (July 27)
- [Consider this 'model' activity to address challenges of students with attention deficits](#) (April 7)
- ['There's no sample ADHD plan' and other talking points for your next staff training](#) (Sept. 24)

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